19 42 to 50 File No. O Charit Trusts / 42 to 50

Legal Deptt

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A BRANCH

Subject:— Opinions regarding Charitable Trusts

P-13

O Charit Trusts/42 to 50

File No.

247-A

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C O N T E N T S.

Legal Department Vol. No. O. Charitable Trusts/1942.

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	O.Charitable Trusts/1942.	Opinions regarding charitable trusts.	
1.	O.No.1267/11-2-42	Re: Donation from Bai ~~Jin Bai~~ Navibai Naserwanji Petit for lunatic asylum for ~~the~~ separate wards, one for male Parsi patients and the other for female Parsi patients. Question whether one of the three blocks in the wards can now be used for non-parsi patients since the Parsi blocks are not fully occupied while the general blocks for females are congested.	
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2.	R.I.No. 11404/8-12-43.	G.R.,R.D.No.5383/33 dt. 12-11-43. Re: His Excellency the Viceroy's Gift Bull Fund. Scheme for administration of -	1-6
	O.Charitable Trusts/1944.		
3.	O.No. 488/20-1-44.	Re: Grant-in-aid by Govt. to Sunder and Bernard's Primary and Anglo Vernacular School at Hadapar of an amount of Rs.31,584/- on execution of a trust deed by the Manager of the school. Question whether the action of the Manager, B.B.P.School, in using the whole or a portion of the building for a primary school only will amount to breach of the terms of the trust-deed.	1-4
4.	O.No.743/28-1-44.	Re: Trust-deed in respect of Boarding House and children's home. Use of the buildings for the purpose other than the purposes mentioned in the trust-deed. Question whether the use of buildings for the purpose	

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		other than mentioned in the trust-deed amounts to breach of conditions.	5-6
5.	O.No.964/4-2-44.	Re: Trust-deed in respect of investment of the funds in Govt. paper in the joint names of the Accountant General, Bombay and the Bishop of Bombay who has been now replaced by the Bombay Diocesan Trust Association, Ltd. Question ~~xhx~~ regarding managem nt of trust fund and the collection of interest or income thereof.	7-8
6.	O.No.1824/9-3-44.	Re: Donation by one Mr. Jamnadas M. Desai towards the construction of anew school building for girls at Hansot subject to certain conditions. Condition No.2 of those conditions is as follows :- "No.2. One Lady of the donor's family be permanently appointed a member of the School Sub-Committee of the Village Panchayat, Hansot, and the Surpanch of the Village Panchayat, Hansot be informed accordingly." Question whether legally the D.Local Board, Broach, can now ask the donor to delete condition No.2 of the conditions subject to which the donation was given. Bombay Village Panchayats Act, 1933, Section 6. Bombay Primary Education Rules, 1924, rule 94.	9-14
7.	O.No.4338/21-6-44.	Re: "The Sir Sassoon David Trust Fund Question whether there is any ~~xxgxx~~ legal objection to payment of travelling expenses out of the trust fund, if any, incurred by the trustees for attending the meeting of the Board of Trustees.	15-16
	O.Charitable Trusts/1945 to 49.	No files were opened during the years 1945,46,47, 48 and 49.	
	O.Charitable Trusts/1950.		

~~8.~~ 8	R.I. No.2006/6-2-50. O.No.2273/16-2-60.	Re: Petition to the H.P.M. by one Mr. Hiranand Gangadas Vaswani as regards mismanagement of a trust created by will by his grand-uncle. Question whether Govt. canhelp Mr. Vaswani in any way and if so, what would be the appropriate department to take necessary action. 1-8
~~9. 10.~~ 9	O.No.6545/13-5-50.	Charitable and Religious Trusts Act, 1920, sec.7. The Sidhpur Hindu Hospital-charging of fees at - 9-10
~~10. 11.~~ 10	R.I.No.8440/50 O.No.7271/29-5-50.	Re: Shri Tole Mohamed Khan Silver Jubilee and Shah Manchand Maganchand Eye Hospital. Condition of communal reservation in the Trust-deed - Question regarding deletion of the condition in respect of communal reservation. Charitable and Religious Trusts Act, 1920, Sec.7. 11-14

9/10/55

Office of the R.L.A.

It appears that Bai Dinabai Maservanji Petit offered to donate Rs. 20,000 for attaching to the lunatic asylum at Nowpada two separate wards, one for male Parsi Patients and the other for female Parsi Patients on certain conditions, one of which viz. the second was that those wards should be set apart for the exclusive use of Parsi patient and that the same or any part thereof should not be permitted to be used by the patients of any other community except when there is not a single Parsi patient in the asylum. (see the letter from Mr. Dinsha Bomanji Pestanji Master dated the 25-8-1897 printed in the preamble of the G.R. No. 2522 dated the 12th May 1900). Government decided with the consent of Awabai. daughter of Dinbai that separate accommodation for Parsis would not be required at Nowpada, but that accommodation for them should be provided in the plans and estimates for the proposed Mental Hospital at Yeravda (see latter from Mr. D.B.P. Master dated the 28.8.99 in the preamble and paragraph 4 of the G-R., G.D. No. 2522, dated the 12-5 1900). Governmentaccepted the donation on the terms stipulated by Bai Dinabi in her letter dated the 25th August 1897 printed in the preamble of G.R. of 1900 and the Government securities of the said amount were direct to be handed over to the Accountant General for safe custody. (See G.R., G.D., No. 4234 dated the 28.7.1902). When the Central Mental Hospital Yeravda was constructed an accommodation for 28 Parsi male and 14 Parsi female patients in blocks 5, 6, 6-A, 7 and 8 was reserved. The only thing that remained to be done was to enclose them by a wall to satisfy the condition about segregation and to put up tablets on them bearing thename of Mr. Maserwanji Manekji Petit. Governmentordered these to be done and directed the donation of Rs. 20.000 (with accumulated interest)made by Bai Awabai in connection with the two

separate wards for Parsi patients at the Mental Hospital Yeravda, should be credited to Government (see G-R., G.D., No. 4995, dated the 4.9.1925). It appears that the enclosure was not found to be practicable and in the meantime the executors of the Bai Awabai Framji Petit offered a further donation of Rs. 30,000 for the purpose of constructing a female ward for the Parsi lunatics subject to the conditions that (1) a tablet should be put up on the completion of the late Mr. Nusserwanji Manekji Petit and (2) the existing accommodation for Parsi patients should not be reduced but should be maintained at its present strength after the construction of the new quarters, which should serve as an additional accommodation for about a dozen female patients. Government accepted this offer and in supersession of the orders contained in the G.R. of 1925 Government sanctioned by G.R.(G.D,) No.4995 dated the 27.10-1926 the construction of a new Parsi women's Block (presumably two blocks see the memorandum from the Superintending Engineer, dated the 17-9-1926 printed in the preamble of the G.R.) at an estimated costof Rs; 177000. The third block was constructed by Sir J.B. Boman-Behram in the enclosure of the two blocks which were apparently constructed at a cost of Rsl 1,36,200; the Nusserwanji Manekji Petit Fund providing Rs. 67,753 and the Government of Bombay the remainder. (See letter from the Superintendent, Central Hospital for Mental Diseases, dated the 18th February 1935, printed as accompaniment to G.R., G.D. No. 5224 dated the 24.6.1935). The question for consideration of the R.L.A. is whether one of the three blocks in the enclosure can now be used for non-Parsi patients since the Parsi blocks are not fully occupied while the general blocks for females are congested.

2. The primary rule governing the execution of charitable trusts is that the intention of the donor must be observed. When the donor's directions can be exactly obeyed the Court,

will not allow any departure from them on the grounds of expediency. The Court cannot vary or modify existing charity trusts so as to meet its own views with regard to what it may think beneficial and for the general advantage of the public, but the Court will see that the trusts are properly administered and that the directions and intentions of the donor are fully carried into effect(see Tudor on Charities pp. 146-147). It appears from the history of the three blocks stated above that it was the intention of the donors that these buildings should be exclusively used by Parsi patientsxxxxx the fact that Government had to supplement these donations from itsown funds would be no ground for holding that one of the boleks could be used by non-Parsi patients when the donations were received specifically subject to the condition of reserving the blocks for the exclusive use of Parsi patients; nor would the fact of these blocks being not fully occupied be a sufficient justification for a departure from the donors intention so long as the trust has neither failed nor has become impossible of execution. The apparation of one of these blocks from the other two either by a fence or a wall as suggested by G.D. at page 7 antex cannot overcome the legal difficulty. The proposal made by the Superintendent,Mental Hospital, Yeravda, in his letter at page 1 ante does not appear to be legally feasible.

Sd/-
10-2

Remembrancer of Legal Affairs.

To G.D., No. 1257 ,dated the 11th day of February 1942.

1943

O Charitable Trust/43

Legal ~~Branch~~ Department-
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Subject--

opinions ~~re dent~~ Re Charitable Trust.

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O charitable trust/43.

1944

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0 Charitable Trusts 7/44

Legal Department—
A Branch

Subject:—

Re

opinions [Charitable Trusts

0 Charitable Trusts/44

From the letter of the D.P.I.No.S.43(a) -175-C dated 10th November 1943 and its accompaniments it seems that the Bunter Bernard Memorial School, Madapsar, was comprised of a Secondary Middle School and a Primary School. At the meeting of the Bunter Bernard Memorial School Management Board the future of Anglo Indian Vernacular School was discussed and it was found that it was not was possible to finance the Anglo-Vernacuoar School. It was consequnetly decided to close down the Agglo Vernacular School and to develop the Primary School into a full Primary School wit with Seven Standards adding one standard every year. In hisxis letter dated 17.3.43, the Manager, B.B.Memorial Schoil, communicated the decision of the B.B. Memorial School Management Board and remarked that as the buildings would still be used for educationalpurposes in terms of the trust deed there would not be any infringment of the conditions and the question of refunding the building grant would not arise. The D.P. I. holds that so long as thexxx building is used towards expansion of primary school and is not used for any purpose other t hanxxxxxxxx education, the action of the management in using the whole or a portion of it for the primary school will not amount to a breach of the agreement.

3. On the above facts, the question for R.L.A.'s consideration is whether the action of the Manager, B.B.M. School, in uning the whole or a portion of the building for a primary school only will amount to breach of the terms of the trust-deed dated 31.10.33.

A : Sd/-
: 4.1

S.A.O. A may be done

Sd/- M.T.K.
6.1

A.L.H. I agree Sd/--R.S.H.
8.1

R.L.A. I agree

Sd/- P.H.H.
18.1

P.T.O.

Office of the R.L.A.

seen and returned.

Sd/- P.M.M.
19.1.44.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 488, dated the 20th January 1944

V.M.D./-8-6
4e

Office of the R.L.A.

Condition 4 of the conditions of the Trust in the Trust deed clearly provides that all the premises and buildi are to be used for the purpose of a boarding house or childr home and that suitable education should be provided either o the said premises or in St. Peter's School Knandala or other ~~permitting the use of the premises and buildings for~~ approved schools in the neighbourhood for children living in the said premises. There being no provision in the Trust de permitting the use of the premises and buildings for any oth purpose even temporarily, the leting of these premises for t duration of war, even subject to the express condition of utilising the proceeding for the purposes of the League, wou be a breach of the conditions of the Trust entitling Govern- ment under the Trust deed to enter upon the premises and realise the amount of the grant by sale of the buildings. But it is open to Government to waive its right for the duration of war without prejudice to its claim to enforce it, if the League persists in the breach of trust by lettin out the premises even after the termination of war.

Sd/- P.N.N.
27.1.44

Remembrancer of Legal Affairs.

U.R. to E.D., No. 743, dated the 28th January 1944.

~~xxxx~~

V.N.D./3-6
4c.

Office of the R.L.A.

It appears that the trust deeds at pp. 5 and 7 ante provide for investment of the funds in Govt. paper in the joint names of the Accountant General, Bombay and the Bishop of Bombay who has been now replaced by the Bombay Diocesan Trust Association, Ltd. (See section 6(2) of the Indian Church Act). The Accountant General is not a trustee under the trust deeds nor have any liabilities been imposed on him under them either as to management of trust funds or to the collection of interest or income thereof. It would therefore be a sufficient compliance with the provisions of the trust deeds if the securities in which the funds have been invested stand in the joint names of the Accountant General and the Bombay Diocesan Trust Association Ltd. The Accountant General need have no apprehension regarding the collection of interest by the Bombay Diocesan Trust Association Ltd. without his knowledge, so long as the the securities stand in the joint names. The Charitable Endowments Act, 1890 has no application to the present case.

Sd/- P.N.M.
4.2.44

Asstt.
Remembrancer of Legal Affairs.

U.O.R. to E.D. No. 954 dated 4th February 1944.

V.M.D./8-6
46.

Office of the R.L.A.

Without amending the Panchayats Act, 1933, the condition attached to the gift is incapable of fulfilment. The problem hardly justifies amendment of the Act. It seems unnecessary to provoke a crisis by asking for the ~~the~~ deletion of the condtion. The donor or his representatives may be allowed to make the first move. The gift would not fail by reason of the fact that one of the conditions cannot now be fulfilled. The Director of Public Instruction's suggestion to allow one lady of the donor's family to visit the school and make suggestions might satisfy the donor.

Sd/- P.K.N.
7.3.44

Remembrancer of Legal Affairs.

U.R. to E.D. No 1824 dated 11th & 14th March 1944

V.M.D./2-8
4c.

Office of the R.L.A.

Charity trustees who have not been guilty of misconduct are entitled to be paid out of the trust funds all costs, charges and expenses properly incurred by them in the execution of or in connection with the trust (see Halsbury Vol. IV page 400). Travelling expenses incurred by the trustees for attending the meeting of the Board of Trustees of "The Sir Sassoon David Trust Fund" are deemed to be expenses properly incurred by the trustees in the execution of or in connection with the trust. Consequently there is no legal objection to paying D.B.Limaye his travelling expenses out of the trust fund.

Sd/- P.N.K.
20.6.44
Remembrancer of Legal Affairs.

U.R. to G.D. No 4338 dated the 21st June 1944

V.M.D./8-6

1950

0 Charitable Trusts/50

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Office of the R.L.A.

In the absence of the trust deed, it is not clear whether it is private or public trust which is mismanaged. If it be case of mismanagement of a trust created for a public or charitable purpose, the applicant may apply to the Court under section 3 of the Charitable and Religious Trusts Act, 1920 or he may file a representative suit with the sanction of the Honourable Advocate General under section 92 of the Civil Procedure Code.

Wakf and public trusts is a subject allotted to the Revenue Department.

Sd/- M.H.Rad.
14.2.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D, through P. & S.D., No. 2273 dated the 15th February 1950.

V.M.L./8-6
Ag.

Office of the R.L.A.

Charitable and Religious Trusts Act, 1920, section 7.
The Sidhpur Hindu Hospital charging of fees at. -

There is no express provision in the Trust-Deed for charging any fees. The fact that the donors who were the first trustees of the Baroda Government never charged any fees and further that this source of income was not present to the mind of the authorities concerned when Baroda Government agreed to bear the cost of maintaining the Hospital, would lend support to Seth Maganlal's contention that the Hospital was intended to be a free-hospital. Since doubts have been raised in the matter, it would be advisable to apply to the District Kimkk Court at Baroda under section 7 of the Charitable and Religious Trusts Act, 1920, for its opinion and to seek its direction after urging the desirability of charging such fees.

Sd/- P.M.L.S.
13-5
Remembrancer of Legal Affairs.

U.R. to L.S.G.&P.H.D. No. 6545 , dated the 13th May 1950.

V.M.D./8-6
Lo.

Office of the R.L.A.

Charitable and Religious Trusts Act, 1920, Sec.7.

As the proposal involves deviation from conditions (8) and (13) of the Conditions of the Trust, directions of the Court may be obtained under section 7 of the Charitable and Religious Trusts Act, 1920.

Sd/- P.M.Lad.
27.5
Remembrancer of Legal Affairs.

J.R. to L.S.G. and P.H.D.No. 7271 , dated the 29th May

V.M.D./8-6
4c.